

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAQUAN McINTOSH,

Movant,

-against-

19-cv-11966 (LAK)  
[16-cr-0212 (LAK)]

UNITED STATES OF AMERICA,

Respondent.

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### MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

Movant was convicted on his plea of guilty of Count One of the Indictment, which charged him with conspiracy to commit racketeering in violation of 18 U.S.C. 1962(d). As part of his plea, and pursuant to his plea agreement, he admitted that he committed the murder of Donville Simpson. He was sentenced principally to a term of imprisonment of 280 months. The judgment was affirmed by the Court of Appeals. *United States v. McIntosh*, 758 Fed. Appx. 141 (2d Cir. 2018). No certiorari petition was filed.

In December 2019, defendant moved, pursuant to 28 U.S.C. § 2255, to vacate, set aside or correct his sentence. He contended that his counsel was constitutionally ineffective, but for which he would not have pleaded guilty. The motion was conclusory and set forth few facts in support of the claims. Dkt. 1450.<sup>1</sup> On March 9, 2020, he filed a fuller, but nevertheless still substantially conclusory, supplement to the original motion. Dkt. 1466.

The government responded on May 7, 2020. Dkt. 1486. On June 11, 2020, the Court denied the motion. Dkt. 1504. It inadvertently did so before the expiration of movant's time to reply to the government's submission. Accordingly, the Court indicated that it would reconsider the motion in light of any reply by movant submitted, as ultimately extended, by October 7, 2020. No reply was filed by October 7, and the Court thereafter denied reconsideration. Dkt. 1514.

The Court subsequently received reply papers from movant on October 15, 2020. The reply papers have expanded on the motion papers movant filed earlier and relate what may be

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All references are to the 16-cr-212 (LAK) docket.

a novel account of the events of October 5, 2013. In substance, movant asks the Court to accept these papers, to consider them as part of the original submission, and to reconsider its June 11, 2020 ruling.

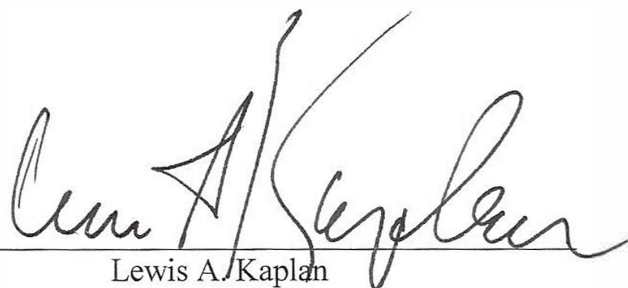
The Court is entertaining the possibility of reconsidering its previous ruling, taking into account the October 15, 2020 reply papers.

In the circumstances, including but not limited to movant's assertion as to "the facts [he allegedly] provided to Movant's attorney" (Dkt 1515, at 3-4), movant has waived the attorney-client privilege with respect to all communications between movant and his attorney, Mr. Bell, concerning (1) the death of Donville Simpson, (2) whether and on what terms and basis the movant should plead guilty or go to trial, (3) movant's sentencing exposure in the event of a guilty plea or conviction after trial, and (4) any other matters addressed by movant in his 2255 motion, his amended 2255 motion, and his October 15, 2020 filing. Mr. Bell is hereby directed to file an affidavit fully addressing these matters on or before January 28, 2021.

The government is hereby directed to file a further response to movant's motion, including the October 15, 2020 filing, on or before February 26, 2021.

SO ORDERED.

Dated: December 30, 2020

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan  
United States District Judge